

# EXHIBIT 1

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18  
19 IN THE UNITED STATES DISTRICT COURT  
20  
21 FOR THE DISTRICT OF ARIZONA  
22

19 Emily Thoms and Kamaleilani Moreno,  
20 Plaintiffs,  
21  
22 vs.  
23 Maricopa County Community College  
24 District,  
25 Defendant.  
26

Case No. 2:21-cv-10781-SPL

**[DEFENDANTS' PROPOSED]  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW FOR  
PRELIMINARY INJUNCTION  
HEARING**

(Assigned to the Hon. Steven P. Logan)

**(Preliminary Injunction Hearing Set for  
November 1, 2021, at 9:00 a.m.)**

Pursuant to the Court's Order dated October 26, 2021 (Dkt. 15), Defendant Maricopa County Community College ("MCCCD") submits its Proposed Findings of Fact and Conclusions of Law.

## **FINDINGS OF FACT**

### **I. The Parties.**

1. MCCCD is a community college district with ten colleges located in Maricopa County, Arizona. (Dkt. 17-1, p. 4, ¶ 6.)

2. Emily Thoms ("Thoms") and Kamaleilani Moreno ("Moreno") are enrolled in the nursing program at Mesa Community College. (Compl. ¶ 9.)

### **II. The MaricopaNursing Program and Clinical Rotations.**

#### **A. MaricopaNursing.**

3. Eight MCCCD colleges offer nursing programs, called MaricopaNursing, through which students earn an associate degree in applied science ("AAS"). (Dkt. 17-1, p. 4 at ¶ 7.)

4. MaricopaNursing is approved by the Arizona State Board of Nursing ("AZBN") and accredited by the Accreditation Commission of Education in Nursing ("ACEN"). (Dkt. 17-1, p. 4 at ¶ 7.)

5. MaricopaNursing currently has more than 2,200 students. (Dkt. 17-1, p. 4 at

6. ¶ 7.)

#### **B. Clinical Rotations.**

7. The AZBN is responsible for the licensure of nurses, training, and education programs. See A.R.S. § 32-1606(B).

8. Pursuant to AZBN regulations, accredited nursing schools are required to offer supervised clinical experience. See A.A.C. R-4-19-206; (Dkt. 17-1, p.4 at ¶ 8).

9. MaricopaNursing students must complete four Nursing Theory and Science courses, each of which include clinical rotations during which students treat real-life

1 patients at a pre-approved clinical partner. (Dkt. 17-1, p. 4 at ¶ 9.)

2 10. The Maricopa Nursing administration firmly believes that clinical experiences  
3 provide students with necessary, irreplaceable skills. (Dkt. 17-1, p. 4 at ¶ 10.)

4 **C. MCCCCD Clinical Partners.**

5 11. There are a limited number of healthcare entities in Maricopa County that  
6 offer nursing student clinical rotations that satisfy MCCCCD's pedagogical requirements and  
7 offer appropriate experience and supervision. (Dkt. 17-1, p. 63 at ¶ 7.)

8 12. MCCCCD is not the only educational institution seeking to place nursing  
9 students at these facilities, and the various institutions compete for the same clinical rotation  
10 opportunities. (Dkt. 17-1, p. 63 at ¶ 7.)

11 13. These limitations have been exacerbated by the COVID-19 pandemic. (Dkt.  
12 17-1 p. 63 at ¶ 7.)

13 14. For the fall 2021 semester, MCCCCD had only 536 clinical rotation spots for  
14 its nursing students across its eight colleges (a 15% reduction in clinical rotations from prior  
15 years). (Dkt. 17-1, p. 64 at ¶ 13.)

16 15. These clinical rotations were obtained from 25 different Clinical Partners  
17 across 36 different sites/campuses. (Dkt. 17-1, p. 64 at ¶ 13.)

18 16. This represents a 39% reduction in participating facilities compared to before  
19 the COVID-19 pandemic. (Dkt. 17-1, p. 64 at ¶ 13.)

20 **D. Clinical Partner Agreements.**

21 17. MCCCCD enters into written agreements ("Clinical Partner Agreements") with  
22 its clinical partners ("Clinical Partners"), pursuant to which Clinical Partners make a limited  
23 number of clinical rotation spaces available to MCCCCD students each semester. (Dkt. 17-  
24 1, p. 63 at ¶ 8.)

25 18. As part of the Clinical Partner Agreements, MCCCCD generally agrees that its  
26 students will "adhere to the existing rules and regulations" set by Clinical Partners. (Dkt.

17-1, pp. 63-64 at ¶¶ 9, 11, p. 71.)

19. MCCCCD does not (and cannot) set the rules of its Clinical Partners (Dkt. 17-1, p. 64 at ¶ 10.)

20. MCCCCD does not (and cannot) control the clinical environments of its Clinical Partners. (Dkt. 17-1, p. 64 at ¶ 10.)

**E. Most Stringent Clinical Partner Requirements.**

21. For at least 15 years, MaricopaNursing students have had to agree in advance that they will meet the placement requirements as set up by MCCCCD's "most stringent clinical partner." (Dkt. 17-1, p. 5 at ¶ 11.)

22. MaricopaNursing students agree to meet the requirements of MCCCCD's most stringent Clinical Partner to ensure that MCCCCD may engage in random student placement with Clinical Partners. (Dkt. 17-1, p. 5 at ¶ 11.)

23. This requirement ensures that students comply with applicable safety procedures (e.g., immunizations) regardless of the Clinical Partner site assignment. (Dkt. 17-1, p. 5 at ¶¶ 11-12.)

24. The safety procedures to which students must comply are dictated by MCCCCD's Clinical Partners, not MCCCCD itself. (Dkt. 17-1, p. 5 at ¶ 12.)

**F. Clinical Partner Assignments.**

25. MCCCCD and its Clinical Partners work months in advance of each semester to determine the number of clinical rotation spots available based on the learning needs of the students for the semester. (Dkt. 17-1, p. 5 at ¶ 13.)

26. MCCCCD then allocates those spots among its eight nursing colleges, which then allocate those spots to eligible students at each of the colleges. (Dkt. 17-1, p. 5 at ¶¶ 13-14.)

27. Each of MCCCCD's eight nursing colleges is individually responsible for the assignment of students within its own program, and the assignments are done with the

1 assistance of each college's faculty that teach the Nursing Theory and Science courses with  
2 in-person clinical rotation requirements. (Dkt. 17-1, p.5 at ¶ 14.)

3 28. MCCCCD does not match students with their preferred Clinical Partner or have  
4 a policy that allows students to "rank their top three" choices, as MCCCCD does not have  
5 the resources to engage in such a customized process. (Dkt. 17-1, pp. 5-6 at ¶ 15.)

6 29. Instead, MCCCCD follows a random student assignment process for Clinical  
7 partner placements. (Dkt. 17-1, p. 6 at ¶ 15.)

8 30. To ensure adequate supervision, only a limited number of students may  
9 participate in clinicals per day and per Clinical Partner site. (Dkt. 17-1, p. 6 at ¶ 16.)

10 31. Clinical rotations are therefore staggered during the semester, and students  
11 may be assigned to multiple Clinical Partner sites each semester to complete rotations. (Dkt.  
12 17-1, p. 6 at ¶ 16.)

13 **III. Clinical Partners Stop In-Person Clinical Rotations in 2020.**

14 32. Due to significant safety risks and lack of staffing in the wake of the COVID-  
15 19 pandemic, MCCCCD's Clinical Partners stopped hosting in-person clinical rotations in  
16 spring 2020. (Dkt. 17-1, p. 6 at ¶ 17.)

17 33. On March 20, 2020, however, the AZBN adopted a "Temporary Waiver of  
18 Applicable Professional Licensure Requirements" ("Temporary Waiver"), which allowed  
19 educational institutions to apply for a waiver to "substitute direct patient care  
20 clinical/instruction with simulations during the State of Emergency." (Dkt. 17-1, p. 6 at ¶  
21 18, pp. 18-20.)

22 34. MCCCCD obtained a Temporary Waiver from AZBN to offer simulated  
23 clinical experiences during this time period, so that its nursing students could continue and  
24 complete their semesters and/or programs. (Dkt. 17-1, p. 6 at ¶ 19.)

25 35. A waiver was necessary because AZBN normally requires in-person clinical  
26 rotations. (Dkt. 17-1, p. 6 at ¶ 18, pp. 18-20.)

1           36. Under this Temporary Waiver, all students enrolled in a Nursing Theory and  
2 Science course participated in simulated clinicals designed to imitate, to the extent possible,  
3 the type of in-person activities offered during rotations with a Clinical Partner. (Dkt. 17-1,  
4 pp. 6-7 at ¶ 20.)

5           37. MCCCCD never intended these simulated experiences to be a permanent  
6 alternative to in-person clinicals. (Dkt. 17-1, pp. 6-7 at ¶ 20.)

7           38. MaricopaNursing administrators and faculty firmly believe that in-person  
8 experiences are vital to the integrity of the program, the preparation of students for practice,  
9 and the care and safety of patients. (Dkt. 17-1, p. 7 at ¶ 21.)

10           39. This belief is supported by the statements of MCCCCD's Clinical Partners,  
11 who have indicated that students with a greater percentage of simulated clinical hours lack  
12 communication and hands-on skills as compared to other students with in-person clinical  
13 hours. (Dkt. 17-1, p. 7 at ¶ 21.)

14 **IV. Clinical Partners Resume Certain Clinical Rotations.**

15           40. By spring 2021, most of MCCCCD's Clinical Partners had resumed in-person  
16 clinical rotations for nursing students for certain surgical and critical care areas, and  
17 MCCCCD therefore stopped offering simulated clinicals for those skills sets. (Dkt. 17-1, p.  
18 7 at ¶ 22.)

19           41. However, most Clinical Partners still do not permit in-person rotations in  
20 certain specialty areas (e.g., pediatrics). (Dkt. 17-1, p. 7 at ¶ 23.)

21           42. In the absence of such opportunities, MCCCCD continues to offer simulated  
22 experiences for those specialties only. (Dkt. 17-1, p. 7 at ¶ 23.)

23 **V. Clinical Partners Institute COVID-19 Vaccination Requirements.**

24           43. In late August 2021—after MCCCCD already had made its clinical  
25 assignments for the fall 2021 semester—many Clinical Partners notified MCCCCD that  
26 students attending clinical rotations at their facilities would be required to provide proof of

1 COVID-19 vaccination. (Dkt. 17-1, p. 9 at ¶ 31, p. 64 at ¶ 14.)

2 44. Some Clinical Partners would consider medical or religious exemptions from  
3 the vaccination requirement, while others made clear that they would not. (Dkt. 17-1, p. 64  
4 at ¶ 14.)

5 45. For instance, on July 22, 2021, Banner Health informed MaricopaNursing that  
6 all nursing students attending in-person clinical rotations would need to provide proof of  
7 COVID-19 vaccination and could apply for religious accommodations. (Dkt. 17-1, p. 10 at  
8 ¶ 32, pp. 31-33)

9 46. On September 16, 2021, Mayo Clinic informed MaricopaNursing of a similar  
10 vaccination requirement, but Mayo would not allow accommodations. (Dkt. 17-1, p. 10 at  
11 ¶ 33; pp. 35-36.)

12 47. Some Clinical Partners have modified their vaccine or exemption  
13 requirements, which has resulted in a constantly changing landscape. (Dkt. 17-1, pp. 7–8 at  
14 ¶¶ 26–27.)

15 48. In September 2021, there were 50,993 COVID-19 cases in Maricopa County,  
16 which resulted in 4,091 hospitalizations and 1,209 deaths. (See COVID-19 Cases by Day,  
17 Ariz. Dep't of Health Servs., <https://www.azdhs.gov/covid19/data/index.php#confirmed-by-day>  
18 (last updated Oct. 26, 2021); Hospitalization, Ariz. Dep't of Health Servs., [https://](https://www.azdhs.gov/covid19/data/index.php#hospitalization)  
19 [www.azdhs.gov/covid19/data/index.php#hospitalization](https://www.azdhs.gov/covid19/data/index.php#hospitalization) (last updated Oct. 26, 2021); COVID-  
20 19 Deaths, Ariz. Dep't of Health Servs., <https://www.azdhs.gov/covid19/data/index.php#deaths>  
21 (last updated Oct. 26, 2021)).

22 49. As of October 25, 2021, approximately 37 of MCCC'D's Clinical Partners  
23 have implemented some form of a COVID-19 vaccination requirement. (Dkt. 17-1, pp. 8-9  
24 at ¶ 27.)

25

26



1 **VI. Compliance with Clinical Partner Vaccine Requirements.**

2 50. In August 2021, MCCCCD informed its nursing students of its Clinical Partner  
3 vaccine requirements and advised that, to ensure compliance with the Clinical Partners’  
4 rules, students would be required, by September 30, 2021, to (1) provide proof they had  
5 received the Pfizer or Moderna two-dose vaccination, (2) provide proof they had received  
6 the Johnson & Johnson one-dose vaccination, or (3) complete and upload a signed form  
7 indicating they were declining the COVID-19 vaccine. (Dkt. 17-1, p. 9 at ¶¶ 28–29, pp.22–  
8 24.)

9 51. MCCCCD informed students that if they declined the vaccine, it may result in  
10 their removal from the clinical rotation component of the applicable course, and a possible  
11 incomplete, withdrawal from, or failure of the clinical aspect of the applicable course. (Dkt.  
12 17-1, p. 9 at ¶ 30, pp. 26-29.)

13 52. MCCCCD reminded students that it “cannot alter any clinical partner  
14 requirements” but encouraged students to seek accommodations directly from the Clinical  
15 Partner, if applicable. (Dkt. 17-1, p. 9 at ¶ 30, pp. 26-29.) (emphasis added.)

16 53. MCCCCD cannot alter Clinical Partners’ vaccine requirements for clinical  
17 rotations, nor can MCCCCD force a Clinical Partner to allow a student that is not COVID-  
18 19 vaccinated to participate in in-person clinical rotations at the Clinical Partner’s site. (Dkt.  
19 17-1, p.10 at ¶ 34.)

20 54. MCCCCD can, and has, offered academic accommodations to nursing students  
21 on religious or other grounds and has established a process by which students can seek  
22 academic accommodation from Clinical Partner requirements. (Dkt. 17-1, p. 10 at ¶ 34.)

23 55. For example, for students assigned to Clinical Partners that do not require  
24 vaccination or permit exemptions, MCCCCD has not deemed those students out of  
25 compliance with MCCCCD’s long-standing “comply with the most stringent Clinical  
26 Partner” requirement. (Dkt. 17-1, p. 10 at ¶ 35.)

1           56. Likewise, for students assigned to Clinical Partners that do not offer any  
2 exemptions, MCCCCD has waived its tuition refund and withdrawal policy, allowed students  
3 to complete the classroom aspects of their clinical courses, and allowed students to take an  
4 incomplete for the course and make up the clinical rotation component of the course next  
5 semester (assuming adequate placements are available). (Dkt. 17-1, pp. 10-11 at ¶ 36.)

6           57. MCCCCD has granted these academic accommodations to all 124 students  
7 seeking religious accommodation. (Dkt. 17-1, p. 11 at ¶ 37.)

8 **VII. Plaintiffs Are Randomly Assigned to Clinical Partners.**

9           58. In August 2021, MCCCCD finalized its fall 2021 Clinical Partner placement  
10 sites for nursing students. (Dkt. 17-1, p. 9 at ¶ 31.)

11           59. Without advance knowledge of Plaintiffs' religious beliefs or the  
12 requirements of the Clinical Partners' where they were placed, Thoms was randomly  
13 assigned to rotations at Banner Heart and Mayo Clinic, commencing on October 18 and  
14 November 8, 2021, respectively. (Dkt. 17-1, p. 9 at ¶ 31.)

15           60. Without advance knowledge of Plaintiffs' religious beliefs or the  
16 requirements of the Clinical Partners' where they were placed, Moreno was randomly  
17 assigned to Mountain Vista Medical Center and Mayo Clinic, commencing on October 5  
18 and November 18, 2021, respectively. (Dkt. 17-1, p. 9 at ¶ 31.)

19           61. As noted, Mayo does not allow for religious exemptions. On September 10,  
20 2021, Plaintiffs submitted virtually identical "declination" and "accommodation" forms  
21 identifying religious objections to vaccinations and seeking accommodation. (Dkt. 17-1, p.  
22 11 at ¶¶ 38–39; pp. 42-53.)

23           62. On September 14, 2021, MCCCCD informed Plaintiffs that it could not alter  
24 the requirements of their Clinical Partners, but it could offer them the academic  
25 accommodations described in Paragraph VI.7 above. (Dkt. 17-1, p.11 at ¶ 40, pp. 54-59;  
26 Dkt. 1, ¶¶ 54, 61.)

1 **VIII. Plaintiffs Demand Accommodations That Are Not Feasible.**

2 63. In response, Plaintiffs insisted on alternate accommodations, including that  
 3 MCCCCD: (1) alter its contracts and negotiate with Clinical Partners to permit religious  
 4 exemptions for Plaintiffs during their fall 2021 rotations, (2) allow Plaintiffs to complete  
 5 their clinicals via simulation or extra assignments during fall 2021, (3) allow Plaintiffs to  
 6 complete their clinicals at “fire departments or physicians’ offices” during fall 2021, or (4)  
 7 switch Plaintiffs to a Clinical Partner site that does not mandate vaccination or permits  
 8 exemptions during fall 2021. (See Dkt. 1, ¶ 30; Dkt. 17-1, p.11 at ¶ 41.)

9 64. MCCCCD evaluated these each of these requests and determined they were not  
 10 feasible, reasonable, or both. (Dkt. 17-1, p.11 at ¶ 42.)

11 65. MaricopaNursing has determined that it would need to make any  
 12 accommodation given to Plaintiffs available to other similarly situated MaricopaNursing  
 13 students whose religious beliefs are inconsistent with their assigned Clinical Partner’s  
 14 vaccination requirements, and there are approximately 30 MaricopaNursing students who  
 15 fall within this category. (Dkt. 17-1, p. 14 at ¶ 52.)

16 **A. Modify Clinical Partner Agreements.**

17 66. Clinical Partners have the ultimate authority to determine the rules and  
 18 regulations applicable to the clinical setting. (Dkt. 17-1, p. 65 at ¶ 16.)

19 67. MCCCCD has engaged in ongoing dialogue with its nursing Clinical Partners  
 20 regarding their COVID-19 vaccination requirements, and some Clinical Partners have  
 21 implemented student exemption processes that did not exist at the start of the semester.  
 22 (Dkt. 17-1, p. 65 at ¶ 16.)

23 68. Other Clinical Partners (e.g. Mayo Clinic) have not implemented student  
 24 exemption processes. (Dkt. 17-1, p. 65 at ¶ 16.)

25 69. Clinical Partners are in a better position to determine what is appropriate for  
 26 their facilities and patient populations, particularly as it related to COVID-19 health and

1 safety protocols, and MCCCCD cannot force its partners to alter their rules. ((Dkt. 17-1, p.  
2 65 at ¶ 17.)

3 **B. Simulation or Extra Assignments.**

4 70. MCCCCD has determined that neither simulation nor extra assignments are an  
5 adequate substitute for hands-on clinical experience; that approach would lower or  
6 substantially modify essential requirements of the nursing program at a time when suitable  
7 in-person options are available. (Dkt. 17-1, p. 12 at ¶ 44.)

8 71. On September 27, 2021, the National Council of State Boards of Nursing  
9 (NCSBN) issued a policy brief to guide nursing education programs receiving requests from  
10 students for alternative clinical experiences when a program's clinical partners require  
11 COVID-19 vaccination in which it noted that nursing education programs "are not  
12 obligated" to provide alternate clinical experiences based on a student's request and stated,  
13 "care experiences with actual individuals or groups continue to be the most important  
14 component of clinical education." (Policy Brief: Clinical Experiences for Unvaccinated  
15 Nursing Students, NCSBN,  
16 <https://www.ncsbn.org/PolicyBriefUnvaccinatedNursingStudents.pdf>.)

17 72. MCCCCD also has determined that simulation would be financially and  
18 logistically unviable, as simulation lab space and personnel are committed through the  
19 remainder of the fall semester. (Dkt. 17-1, p. 13 at ¶ 45.)

20 73. Offering simulation for select students would require MCCCCD to secure and  
21 pay additional staff—mid-semester, on extremely short notice, and in the midst of a nursing  
22 faculty shortage—to supervise the unanticipated simulated clinical sessions. (Dkt. 17-1, p.  
23 13 at ¶ 45.)

24 74. MCCCCD is unable to rely on existing adjunct or residential faculty as a  
25 majority of those staff members already have full schedules for the remainder of the fall  
26 semester. (Dkt. 17-1, p. 13 at ¶ 45.)

1           75. Ancillary personnel would also be required to schedule, prepare, and facilitate  
2 these simulations. (Dkt. 17-1, p. 13 at ¶ 45.)

3           76. Securing physical space and participants for a simulation program would  
4 require months of planning, as it is likely that Plaintiffs are not the only students who were  
5 assigned to sites with vaccination policies inconsistent with their beliefs. The process would  
6 require coordination among MCCCDC's eight colleges to secure space to perform the  
7 simulations, hire faculty, and develop custom curricula and scenarios for each of the  
8 required simulations programs—all with sufficient time to allow for actual participation in  
9 the simulation prior to the end of the fall semester. (Dkt. 17-1, p. 13 at ¶ 46.)

10           **C. Clinicals at Unapproved Locations.**

11           77. MCCCDC has determined that it is not appropriate or feasible for Plaintiffs to  
12 complete clinicals at unapproved local fire departments or physicians' offices that do not  
13 mandate the vaccine. (Dkt. 17-1, p. 14 at ¶ 47.)

14           78. MCCCDC must ensure clinical sites offer experience in the relevant  
15 competencies, with suitable supervision and hands-on practice. (Dkt. 17-1, p. 14 at ¶ 47.)

16           79. MCCCDC would also need to enter into a Clinical Partnership Agreement with  
17 each such site. It is not feasible to accomplish these tasks within the Plaintiffs' desired  
18 timeframe (i.e., before the end of the fall 2021 semester). (Dkt. 17-1, p. 14 at ¶ 47.)

19           **D. Clinicals at Alternate Locations.**

20           81. Moving Plaintiffs to an alternative Clinical Partner site—months after  
21 placements have been made and in the midst of the semester—also is not feasible. (Dkt. 17-  
22 1, p. 14 at ¶ 48.)

23           82. There are less than nine weeks remaining in the fall 2021 semester, and  
24 Clinical Partner placements were made for all students in July of 2021. It would not be  
25 feasible to move Plaintiffs to an alternative Clinical Provider location at this late stage in  
26 the fall 2021 semester. (Dkt. 17-1, p. 14 at ¶ 48.)

1           83. MCCCCD does not presently have any clinical rotation spots available at a  
2 Clinical Partner location that does not require COVID-19 vaccination or that will permit  
3 religious accommodations. (Dkt. 17-1, p. 14 at ¶ 49.)

4           84. MCCCCD would have to either secure additional placements at high-demand  
5 Clinical Partner sites that do not require vaccinations or grant exemptions and make  
6 arrangements with that Clinical Partner for additional staffing oversight and supervision for  
7 Plaintiffs, or identify and displace vaccinated students from their current locations and move  
8 them to Mayo (or other Clinical Partner sites mandating vaccine without exemption). (Dkt.  
9 17-1, p. 14 at ¶¶ 49–50.)

10           85. Or, MCCCCD would have to secure additional placements at Clinical Partner  
11 sites that do not require vaccinations or grant exemptions, and then make arrangements for  
12 additional staffing oversight and supervision for Plaintiffs and other similarly situated  
13 nursing students. (Dkt. 17-1, pp. 14-15 at ¶ 50.)

14           86. Accordingly, Plaintiff's were informed that MCCCCD could not grant their  
15 preferred accommodations. (Dkt. 17-1, p. 15 at ¶ 51.)

16           87. MCCCCD encouraged Plaintiffs to complete their academic requirements and  
17 reminded them of the accommodations previously offered. (Dkt. 17-1, p. 15 at ¶ 51.)

18           88. MCCCCD has not removed either of the Plaintiffs from the MaricopaNursing  
19 program. (Dkt. 17-1, p. 15 at ¶ 51.)

20           89. Plaintiffs have been advised that they may withdraw from their clinical  
21 rotations without penalty, receive an incomplete, and complete their clinical rotations in a  
22 subsequent semester. (Dkt. 17-1, p. 15 at ¶ 51.)

23           90. MCCCCD assured Plaintiffs that, subject to availability, they would be placed  
24 with a Clinical Partner that will accommodate their religious beliefs so that they can  
25 complete their program requirements and obtain their degrees in spring 2022. (Dkt. 17-1,  
26 p. 15 at ¶ 51, p. 90 at ¶ 2, pp. 92-93.)

1 **IX. Plaintiffs Filed the Complaint and the Court Denies the TRO.**

2 91. Plaintiff filed a Verified Complaint and Motion for Temporary Restraining  
3 Order and/or Preliminary Injunction on October 21, 2021. Plaintiffs assert claims for  
4 violation of the Free Exercise Clause and the FERA. (Dkt. 1-2.)

5 92. On October 21, the Court denied Plaintiffs' request for a Temporary  
6 Restraining Order and set a briefing schedule and hearing on the request for a preliminary  
7 injunction. (Dkt. 8.)

8 **CONCLUSIONS OF LAW**

9 **I. The Standard of Review.**

10 93. "A preliminary injunction is an extraordinary remedy never awarded as of  
11 right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *Mazurek v. Armstrong*,  
12 520 U.S. 968, 972 (1997).

13 94. The party seeking injunctive relief must demonstrate that: (1) she is likely to  
14 succeed on the merits; (2) she is likely to suffer irreparable harm absent preliminary relief;  
15 (3) the balance of equities tips in her favor; and (4) an injunction is in the public interest.  
16 *Winter*, 555 U.S. at 20.

17 95. Plaintiffs' requested injunction is not just prohibitory but mandatory in nature,  
18 as Plaintiffs seek to prevent MCCCCD from acting and to compel MCCCCD to "adopt a  
19 suitable accommodation for Plaintiffs that will allow them to complete their academic  
20 programs on time and as scheduled and contracted-for by Plaintiffs." (Dkt. 2 at 1). See  
21 *Marlyn Nutras., Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009).

22 96. Mandatory injunctions "go[] well beyond simply maintaining the status quo";  
23 therefore, they are "particularly disfavored," subject to heightened scrutiny, and are denied  
24 "unless extreme or very serious damage will result" and the "facts and law clearly favor the  
25 moving party." *Id.* (citations and quotations omitted) (emphasis added); *Stanley v. Univ. of*  
26 *S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994).

1           97. Mandatory injunctions are “not issued in doubtful cases or where the injury  
2 complained of is capable of compensation in damages.” Marlyn, 571 F.3d at 879. Plaintiffs  
3 do not satisfy this very heavy burden.

4       **II. The Requested Injunction Would Not Redress Plaintiffs’ Alleged Harm.**

5           98. The injunctive relief that Plaintiffs request would not redress their alleged  
6 harm, and Plaintiffs are not legally entitled to the relief that they seek.

7           99. Plaintiffs allege that MCCCCD violated their right to freely exercise their  
8 Christian religion by adopting a “vaccine mandate” that “places them in an irresolvable  
9 conflict between compliance with the mandate and their sincerely held religious beliefs.”  
10 (Dkt. 1 at 21-24).

11          100. But MCCCCD has not adopted a policy or rule mandating COVID-19  
12 vaccination as a condition of admission or attendance at any of its colleges. Plaintiffs are  
13 not required to be COVID-19 vaccinated to attend or obtain a nursing degree from MCCCCD,  
14 nor does MCCCCD require that Plaintiffs be COVID-19 vaccinated to participate in clinical  
15 nursing rotations.

16          101. The Court cannot enjoin MCCCCD from engaging in conduct that is not  
17 occurring. Accordingly, the Court denies Plaintiffs’ Motion to the extent it seeks to enjoin  
18 MCCCCD from adopting or implementing a “vaccine mandate”.

19          102. The Court further finds that Plaintiffs’ real grievance is with the COVID-19  
20 vaccination requirements adopted by some of MCCCCD’s non-governmental Clinical  
21 Partners for participation in clinical rotations at that Clinical Partner’s location.

22          103. The Clinical Partners, however, are not parties to this proceeding, and any  
23 order issued by the Court would not bind them. Fed. R. Civ. P. 65(d)(2).

24          104. Because MCCCCD has no ability, contractual or otherwise, to modify policies  
25 adopted by its Clinical Partners for clinical rotations at their facilities, an injunction would  
26 not redress Plaintiffs’ real grievance. See *Vegan Outreach, Inc. v. Chapa*, 454 F. App’x



1 598, 600-01 (9th Cir. 2011) (“We do not find that a preliminary injunction against only one  
 2 defendant in this case will likely provide redress against all other officials not under the  
 3 defendant’s control and empowered to apply the same harmful restrictions against the  
 4 plaintiff”).

5 105. Accordingly, the Court denies Plaintiffs’ Motion, including to the extent it  
 6 seeks to enjoin or alter the policies, rules, or procedures of MCCCCD’s Clinical Partners

7 **III. In All Events, the Court Holds that Plaintiffs Are Not Likely to Succeed on the**  
 8 **Merits of Either of their Two Claims.**

9 106. Even assuming that the Court could grant relief that would redress the harm  
 10 Plaintiffs’ allege and seek to enjoin, the Court concludes that Plaintiffs have not  
 11 demonstrated that they are likely to succeed on the merits of either of their claims.

12 **A. The Free Exercise Claim.**

13 107. Laws or policies that are neutral, of general applicability, and only have an  
 14 “incidental effect” on a plaintiff’s religious beliefs, are reviewed for rational basis, not strict  
 15 scrutiny. See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531  
 16 (1993); *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878-79 (1990).

17 108. The Court concludes that the policy Plaintiffs challenge is neutral, of  
 18 general applicability, and has only an incidental effect on Plaintiffs relief.

19 109. The Court therefore reviews the Free Exercise Claim under the rational basis  
 20 standard.

21 110. Other courts that have considered Free Exercise challenges to  
 22 COVID-19-related mandates and restrictions similarly have applied the rational basis  
 23 standard. See *Resurrection School v. Hertel*, 11 F.4th 437, 456 (6th Cir. 2021); *Klaassen v.*  
 24 *Trustees of Ind. Univ.*, 2021 WL 3073926, at \*25 (N.D. Ind. July 18, 2021); *Cassell v.*  
 25 *Snyders*, 458 F. Supp. 3d 981, 995 (N.D. Ill. 2020); *Denis v. Ige*, 2021 WL 1911884, at \*8  
 26 (D. Haw. May 12, 2021).

1           111. Under rational basis, the law or policy “must be upheld if it is rationally  
2 related to a legitimate governmental purpose.” *Parents for Privacy v. Barr*, 949 F.3d 1210,  
3 1238-39 (9th Cir. 2020). Plaintiffs must “negate every conceivable basis which might  
4 support” the law or policy. *Id.* (citations omitted).

5           112. The Court finds that the MCCCCD policy that Plaintiffs seek to enjoin is not a  
6 “vaccine mandate”, but instead is a policy that requires nursing students to comply with the  
7 vaccine requirements of the Clinical Partners where the students are to perform in-person  
8 clinical rotations. The Court concludes that such a policy satisfies the rational basis  
9 standard.

10           113. MCCCCD is a provider of nursing education in Maricopa County that  
11 graduates hundreds of skilled nurses each year. Given the importance of in-person clinical  
12 opportunities to nursing education, MCCCCD has a legitimate interest in insuring that it will  
13 be able to place students into in-person clinical rotations with its Clinical Partners. The most  
14 efficient (and contractually required) method of furthering that interest—i.e., insuring that  
15 such rotation opportunities still exist year after year—is to require MCCCCD students to  
16 comply with the rules and regulations adopted by the Clinical Partners where the students  
17 will perform those rotations.

18           114. Even if MCCCCD’s policy is treated as a “vaccine mandate,” however, the  
19 policy still satisfies the rational basis standard.

20           115. It is universally recognized that the state has a legitimate interest in preserving  
21 the health and safety of the public and that mandatory vaccinations further such legitimate  
22 interests. “For more than 100 years, the United States Supreme Court has upheld the right  
23 of the States to enact and enforce laws requiring citizens to be vaccinated.” *Whitlow v.*  
24 *California*, 203 F. Supp. 3d 1079, 1083 (S.D. Cal. 2016); see *Jacobson v. Massachusetts*,

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1 197 U.S. 11, 27, 29, 38 (1905).<sup>1</sup>

2 116. Nationwide, courts have held that states have a legitimate interest in  
3 stemming the spread of COVID-19 by implementing mask or vaccine mandates. See  
4 *Klaassen*, 7 F.4th at 593; *Williams v. Brown*, 2021 WL 4894264, at \*8 (D. Or. Oct. 19,  
5 2021); *Harris v. Univ. of Mass., Lowell*, 2021 WL 3848012, at \*6 (D. Mass. August 27,  
6 2021).

7 117. Requiring that students comply with COVID-19 safety policies dictated by  
8 MCCC'D's Clinical Partners, including COVID-19 vaccination requirements, in order to  
9 participate in clinical rotations undoubtedly furthers those legitimate interests. The  
10 COVID-19 pandemic remains an exigent threat, particularly to those living and working in  
11 Maricopa County.

12 118. MCCC'D's Clinical Partners are on the front lines, serving (among others)  
13 citizens that are immunocompromised, ineligible for vaccination, or at high risk for poor  
14 outcomes).

15 119. Plaintiffs are among the MCCC'D nursing students that would be directly  
16 interacting with these patients as part of their clinical rotations. Requiring that the students  
17 follow the policies dictated by the Clinical Partners (and the vast majority of those partners  
18 require vaccination) directly furthers the interest in preventing the spread of COVID-19.

19 120. The Court also rejects Plaintiffs' assertion that MCCC'D's refusal to grant  
20 Plaintiffs' preferred academic accommodations constitutes a violation of the Free Exercise  
21 Clause.

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22  
23 <sup>1</sup> See also *Prince v. Massachusetts*, 321 U.S. 158, 166-67, 64 S. Ct. 438, 442, 88 L. Ed. 645  
24 (1944); *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (mandatory  
25 vaccination does not violate the Free Exercise clause); *Whitlow*, 203 F. Supp. 3d at 1083-  
26 1086 (upholding vaccination law and stating "the right to free exercise does not outweigh  
the State's interest in public health and safety"); *Workman v. Mingo Cty. Bd. of Educ.*, 419  
F. App'x. 348, 353-54 (4th Cir. 2011).

1           121. Plaintiffs do not have a First Amendment right to a religious exemption from  
2 a vaccination requirement, let alone to the religious-based accommodation of their  
3 preference.

4           122. Federal courts consistently have held that a mandatory vaccination  
5 requirement does not violate the Free Exercise Clause—even where there is no religious  
6 exemption. See *Nikolao v. Lyon*, 875 F.3d 310, 316 (6th Cir. 2017); *Harris*, 2021 WL  
7 3848012, at \*7.

8           123. Plaintiffs' dissatisfaction with MCCCCD's decision to reject their preferred  
9 accommodation is not a viable Free Exercise Clause claim.

10           124. Accordingly, the Court holds that Plaintiffs have not satisfied their burden to  
11 show that the Free Exercise Claim is likely to succeed on the merits.

12           **B. The FERA Claim.**

13           125. Defendant MCCCCD argues that the Court should decline to exercise  
14 supplemental jurisdiction over the FERA claim under 28 U.S.C. § 1367(c)(1), because that  
15 claim requires evaluation of novel and complex issues of Arizona law. The Court agrees,  
16 and it will decline to exercise supplemental jurisdiction over the FERA claim.

17           126. However, even if the Court were to exercise supplemental jurisdiction over  
18 the FERA claim, the Court finds that Plaintiffs are not likely to succeed on the merits of  
19 this claim.

20           127. Under the FERA, Plaintiffs bear the burden of proving that the challenged  
21 law or policy substantially burdens their exercise of a sincerely held religious belief. See  
22 *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 297, ¶ 127 (2019). If that is  
23 satisfied, then the burden shifts to the Defendant to demonstrate a compelling state interest  
24 and the least restrictive means of furthering that interest. See A.R.S. § 41-1493.01. Plaintiffs  
25 have not satisfied and cannot satisfy this standard.

26           128. As an initial matter, the Court concludes that Plaintiffs are not likely to prevail

1 on the merits of this claim because MCCCCD did not adopt a policy mandating COVID-19  
2 vaccination.

3 129. The Court assumes for purposes of the Motion that Plaintiffs hold a sincerely  
4 held religious belief.

5 130. However, the Court concludes that the MCCCCD policy that Plaintiffs  
6 challenge is not a substantial burden on Plaintiffs' exercise of a sincerely held religious  
7 belief. For that reason alone, Plaintiffs are not likely to prevail on the merits of the FERA  
8 claim.

9 131. "[A] substantial burden exists only when government action forces  
10 individuals to choose between following the precepts of their religion and receiving a  
11 government benefit, or it compels them, under threat of criminal sanction, to perform acts  
12 undeniably at odds with fundamental tenets of their religious beliefs." *Brush & Nib Studio*,  
13 LC, 247 Ariz. at 298, ¶ 131 ("Not every burden is substantial").

14 132. The vaccination requirements of MCCCCD's Clinical Partners do not compel  
15 Plaintiffs to perform acts undeniably at odds with their religious beliefs under threat of  
16 criminal sanction. Nor do such requirements force Plaintiffs to choose between their  
17 religious beliefs and the receipt of a government benefit.

18 133. Plaintiffs' adherence to their religious beliefs will not deprive them of "the  
19 remainder of their contracted-for education services". Plaintiffs will not be expelled from  
20 MCCCCD. They will not receive a failing grade. They will not be financially penalized. They  
21 simply will be unable to complete the clinical component of their courses this semester.  
22 That is not a substantial burden.

23 134. Accordingly, for this reason alone, Plaintiffs are not likely to prevail on the  
24 merits of the FERA claim.

25 135. However, the Court finds that even if Plaintiffs were able to satisfy their  
26 burden of demonstrating a substantial burden, MCCCCD has met its burden of demonstrating

1 that the Clinical Partner vaccination requirements are motivated by compelling interests.

2 136. Those compelling interests include (1) insuring that MCCCCD can continue to  
3 offer in-person clinical rotations to all of its nursing students; and (2) stemming the spread  
4 of COVID-19 and ensuring a safe environment for Clinical Partner patients (especially  
5 those most vulnerable to this disease). See *Roman Cath. Diocese of Brooklyn v. Cuomo*,  
6 141 S. Ct. 63, 67 (2020) (“Stemming the spread of COVID-19 is unquestionably a  
7 compelling interest ....”); *Williams* 2021 WL 4894264, at \*11.

8 137. The Court further finds that MCCCCD has met its burden of demonstrating that  
9 it follows the least restrictive means available.

10 138. Under this element of the FERA test, MCCCCD “must show that it lacks other  
11 means of achieving its desired goal without imposing a substantial burden on the exercise  
12 of religion by the objecting party.” *Brush & Nib Studio*, 247 Ariz. at 302 (internal citations  
13 omitted).

14 139. MCCCCD does not need to show that there are no “conceivable” less restrictive  
15 means—only that the proposed alternatives are “ineffective or impractical.” *Id.*

16 140. MCCCCD has satisfied this burden.

17 141. MCCCCD’s Clinical Partner vaccination requirements and MCCCCD’s policy  
18 of requiring compliance with those requirements are narrowly tailored. Each MCCCCD  
19 nursing student need only comply with the vaccination requirements of the Clinical Partner  
20 to which the student has been assigned. See *Does 1-6 v. Mills*, 2021 WL 4860328, at \*8  
21 (1st Cir. Oct. 19, 2021) (healthcare worker vaccination mandate narrowly tailored because  
22 it did not “extend beyond the narrow sphere of healthcare workers...”).

23 142. Although MCCCCD cannot control whether Clinical Partners offer exemptions  
24 from their vaccination requirements, whenever MCCCCD nursing students receive approved  
25 exemptions from the assigned Clinical Partners, MCCCCD permits them to complete their  
26 clinical rotation. Similarly, MCCCCD has extended academic accommodations to all

1 students requesting them for religious reasons.

2 143. Plaintiffs argue that their preferred accommodations are less restrictive means  
3 of furthering the compelling interests at issue, but the Court disagrees.

4 144. The Court finds that the accommodations Plaintiffs' prefer are ineffective and  
5 impractical, particularly given the time and expense required for MCCCDC to put such  
6 accommodations in place, the approximately 30 students MCCCDC would need to make  
7 those accommodations available to, and the fact that the fall 2021 semester is already near  
8 completion.

9 145. Deferring Plaintiffs' clinical rotations to the spring 2022 semester will not  
10 compromise Plaintiffs' religious beliefs, and it will afford MCCCDC the opportunity to place  
11 Plaintiffs with a Clinical Partner whose restrictions do not offend Plaintiffs' religious  
12 beliefs.

13 146. MCCCDC's accommodation is the least restrictive means available under the  
14 circumstances. For these reasons, Plaintiffs will not succeed on the merits of the FERA  
15 claim.

16 **III. Plaintiffs Have Not Demonstrated Irreparable Harm.**

17 147. The Court also finds that Plaintiffs have not demonstrated irreparable harm.

18 148. Plaintiffs allege that they will suffer irreparable harm absent injunctive relief  
19 because "the District's threat of removing them from their academic programs if they do  
20 not get vaccinated by November 8, 2021" forces them to follow "their religious beliefs and  
21 suffering the deprivation of these educational benefits". (Dkt. 2 at 8.) The Court disagrees.

22 149. MCCCDC has not and will not "remov[e Plaintiffs] from their academic  
23 programs" if they do not get vaccinated. MCCCDC has given Plaintiffs academic  
24 accommodations by allowing them to withdraw from the clinical component of the courses  
25 without penalty and with tuition reimbursement, receive an incomplete for the course,  
26 complete the traditional classroom portion of the course during the fall, and complete the

1 clinical rotation component of the courses next semester, provided appropriate Clinical  
 2 Partner sites are available. Plaintiffs will not be divested of their opportunity to complete  
 3 the clinical rotations, or the opportunity to graduate and apply for a nursing license.

4 150. At most, Plaintiffs' completion of the clinical component of the relevant  
 5 courses may be slightly delayed; however, it is well-established that a delay in collegiate  
 6 education does not constitute irreparable harm. See *Am.'s Frontline Drs. v. Wilcox*, 2021  
 7 WL 4546923, at \*7 (C.D. Cal. July 30, 2021) (delay in education resulting from refusal to  
 8 comply with vaccine requirement did not constitute irreparable harm); *Harris*, 2021 WL  
 9 3848012, at \*8 (same).

#### 10 **IV. The Balance of Hardships Weighs in Favor of MCCCCD.**

11 151. The Court must balance the burden on Plaintiffs (if the status quo is  
 12 maintained) with the burden on MCCCCD (if the injunction is granted). *Porretti v. Dzurenda*,  
 13 11 F.4th 1037, 1050 (9th Cir. 2021).

14 152. The Court finds that MCCCCD will suffer financial, administrative, and  
 15 potentially contractual harm (vis-à-vis its Clinical Partners) if injunctive relief is granted.  
 16 MCCCCD will incur significant time and expense in implementing Plaintiffs' proposed  
 17 accommodations.

18 153. The Court finds that Plaintiffs will suffer, at most, a short delay in obtaining  
 19 their nursing degrees. They will not be required to violate their religious beliefs by getting  
 20 vaccinated.

21 154. Accordingly, the balance of hardships weighs decidedly in favor of MCCCCD.  
 22 See *Children's Health Def., Inc. v. Rutgers State Univ. of N.J.*, 2021 WL 4398743, at \*7  
 23 (D.N.J. Sept. 27, 2021) (holding Defendants would suffer harm if required to develop new  
 24 procedures to accommodate religious-based vaccination objections).

#### 25 **V. The Public Interest is Not Served by Granting Injunctive Relief.**

26 155. The public interest factor "mostly concerns the injunction's 'impact on



1 nonparties rather than parties.” Porretti, 11 F.4th at 1050. It weighs against injunctive relief  
2 here.

3 156. The Court finds that through MaricopaNursing, MCCCCD provides a valuable  
4 public service—a comprehensive instructional program (with hands-on clinical  
5 experiences) that graduates hundreds of skilled nurses each year into a state that already has  
6 a critical shortage of nurses.

7 157. The Court finds that Plaintiffs’ desired injunction would jeopardize the  
8 administration of the program, threaten MCCCCD’s contractual relationships with Clinical  
9 Partners, and undermine the ability of all of MCCCCD’s nursing students to obtain needed  
10 in-person clinical placements.

11 158. The Court concludes that the public is not served by an injunction that may  
12 negatively impact such a broad class of non-parties.

13 159. The Court concludes that Plaintiffs have not satisfied the Winter factors and  
14 are not eligible for injunctive relief.

15 160. For these reasons, the Court denies the Motion.  
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